

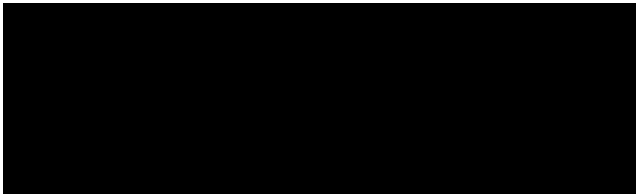
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U.S. Citizenship  
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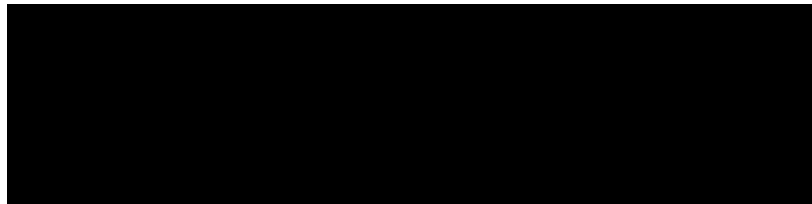
Office: VERMONT SERVICE CENTER

Date: MAY 11 2004

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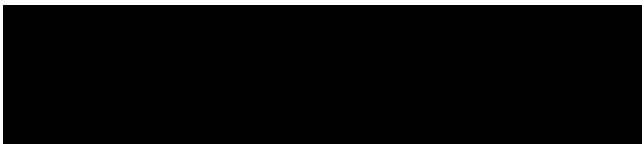
Petitioner:

Beneficiary:




PETITION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:



**INSTRUCTIONS:**

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Jamaica who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen.

The director determined that the petitioner failed to establish that she is eligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act. The director denied the petition, finding that the petitioner had failed to respond to a request for additional evidence.

On appeal, counsel asserts that the petitioner had responded to the director's request for additional evidence and resubmits that evidence on appeal.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that an alien who is the spouse of a United States citizen, who is a person of good moral character, who is eligible to be classified as an immediate relative, and who has resided with her spouse, may self-petition for immigrant classification if the alien demonstrates to the Attorney General that-

(aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and

(bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

The regulation at 8 C.F.R. § 204.2(c)(1)(i) states, in pertinent part, that:

A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:

(A) Is the spouse of a citizen or lawful permanent resident of the United States;

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

(C) Is residing in the United States;

(D) Has resided in the United States with the citizen or lawful permanent resident spouse;

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;

(F) Is a person of good moral character;

\* \* \*

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The regulation at 8 C.F.R. § 204.2(c)(1)(vi) states, in pertinent part:

*Battery or extreme cruelty.* For the purpose of this chapter, the phrase “was battered by or was the subject of extreme cruelty” includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation . . . shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen or lawful permanent resident spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner’s marriage to the abuser.

The regulation at 8 C.F.R. § 204.2(c)(1)(ix) states, in part:

*Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws.

The regulation at 8 C.F.R. § 204.2(c)(2)(iv) states:

*Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abused victim sought safe-haven in a battered women’s shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

The record reflects that the petitioner last entered the United States as a nonimmigrant visitor on July 2, 1993. The record further reflects that the petitioner wed her first husband [REDACTED] on June 23, 1979 and they divorced on January 15, 1996. The record indicates that the petitioner wed United States citizen [REDACTED] April 17, 1998 in Passaic, New Jersey. The petitioner’s citizen spouse filed a Form I-130 petition on her behalf. Action was terminated on the Form I-130 and Form I-485 on May 7, 2001. The petitioner filed a Form I-360 on September 14, 2001, claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her U.S. citizen spouse during their marriage.

The two issues to be addressed in this proceeding are whether the petitioner established that she has been battered or the subject of extreme cruelty perpetrated by her U.S. citizen spouse, and whether she established

that she entered into the marriage in good faith.

The regulation at 8 C.F.R. § 204.2(c)(1)(i)(E) requires the petitioner to establish that she has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage.

The qualifying abuse must have been sufficiently aggravated to reach the level of "battery or extreme cruelty." 8 C.F.R. § 204.2(c)(1)(vi).

Because the petitioner furnished insufficient evidence to establish that she had met this requirement, she was requested on November 15, 2001, to submit additional evidence. The director listed evidence she may submit to establish battery or extreme mental cruelty. In response to the request for additional evidence, counsel for the petitioner submitted the following:

1. A psychotherapist's evaluation dated April 29, 2001, stating: "[a]ccording to the statements made by [the petitioner], this writer concludes that [the petitioner's] husband and her family were abusive."
2. Letters from the petitioner's daughter, pastor and two friends regarding the abuse the petitioner suffered.
3. A motor vehicle certificate of title in the name of the citizen spouse, indicating he resided at 115 E. 32nd Street, Paterson, New Jersey, on October 28, 1997.
4. Wedding photographs.
5. Two medical bills dated March 14, 1998, addressed individually to the petitioner and her citizen spouse at 115 E. 32nd Street, Paterson, New Jersey.
6. An invoice dated February 12, 1996, billed to the petitioner and Oswald Samuels at a post office box in Paterson, New Jersey.

The petitioner initially submitted the following evidence:

1. The petitioner's statements in an affidavit that her citizen spouse took a fancy to her sister and began treating her sister as his wife. Their arguments escalated. The citizen spouse grabbed her by her shirt and shook her while telling her to leave.
2. A letter written by a social work intern dated March 19, 2001 stating that the petitioner sought services from St. Joseph's outpatient mental health clinic on October 31, 2000, complaining of feeling depressed and worried. The petitioner attributed her symptoms to stress resulting from her recent separation from her husband, whom she reported was physically and verbally abusive towards her.

In review, the evidence is insufficient to establish that the petitioner was subjected to battery or extreme cruelty by her United States citizen husband.

It is noted that the petitioner failed to submit reports and affidavits from police, judges, and court officials. She did not obtain an order of protection against her husband or take other legal steps to end the abuse. She did not provide CIS with photographs of injuries. She did not allege she sustained any physical injuries. Her affidavit and the letters she submitted are insufficiently specific as to the exact harm she suffered from her citizen spouse. Simply going on record without supporting documentary evidence is not sufficient for the

purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The next issue to be addressed is whether the petitioner established that she had entered into the marriage with her citizen spouse in good faith, as required by 8 C.F.R. § 204.2(c)(1)(i)(H). The record contains scant evidence that the petitioner and her citizen spouse resided together. There is scant evidence that they commingled their assets or shared liabilities during their marriage. The evidence does not sufficiently demonstrate that the marriage was entered into in good faith.

Beyond the decision of the director, the petitioner failed to provide sufficient evidence of her good moral character. She submitted a police clearance to CIS but the clearance was conducted on a single name search whereas the petitioner has been known by four names [REDACTED] and [REDACTED] for this additional reason, the appeal will be dismissed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.